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August 11, 1961  
Opinion No. 61 - 55

REQUESTED BY: The Honorable Paul Fannin  
Governor of the State of Arizona

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: What are the powers and duties of  
the Governor in the event the Arizona  
National Guard is called into active  
federal service?

CONCLUSION: See body of Opinion.

The militia of the State of Arizona is defined in A.R.S.  
§ 26-121 which states:

"§ 26-121. Composition of militia; persons exempt

The militia of the State of Arizona consists of all  
able bodied citizens of the state between the ages of  
eighteen and forty-five years and all residents of the  
state between such ages who have declared their intention  
to become citizens of the United States, except:

1. Persons exempted by the laws of the state or the  
United States.
2. Idiots, lunatics, totally blind persons and  
persons convicted of infamous crimes.
3. Judges and clerks of courts of record.
4. State and county civil officers holding office  
by election, and members of the legislature.
5. Ministers of the gospel."

Components of the militia as provided by A.R.S. § 26-122  
are the National Guard of Arizona, the State Guard when organized,  
and the unorganized militia.

A.R.S. § 26-124 provides:

"§ 26-124. Service by members of unorganized militia;  
volunteers during emergency; enrollment;  
selection; organizing selectees

A. When the governor proclaims an emergency, and,  
upon advice of the adjutant general, determines that the  
national guard does not have sufficient troops to meet the  
emergency, the Governor may authorize the adjutant general  
to accept for service from the unorganized militia a  
specified number of volunteers.

B. If the governor deems an emergency of a nature  
that all or a large portion of the unorganized militia  
should be called into service of the state, he shall by  
proclamation order all members of the unorganized militia

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to enroll with the county recorder of the county in which they reside. . . . The persons called into service shall be determined by lot in accordance with a plan devised by the governor and implemented by him. The plan shall be patterned upon the latest selective service act of the United States and executive orders of the president issued to implement the law.

C. Upon mobilization for state purposes members of the unorganized militia shall be organized under the command of the officer the governor designates into units comparable to units of the national guard."

A.R.S. § 26-172 states:

"§ 26-172. Emergency mobilization; requests by municipalities for aid of national guard; mobilization into United States service.

A. When the Governor proclaims an emergency, or deems it necessary to protect lives or property, he may mobilize all or any part of the national guard or the unorganized militia into service of the state. The order directing the national guard or the unorganized militia, or any part thereof, to report for active duty shall state the purpose for which it is mobilized and the objectives to be accomplished.

\* \* \*

C. The civil authorities of a county or municipality requiring aid . . . shall submit to the governor a written request for aid, . . . Upon receipt of the request the governor may by proclamation mobilize all or any part of the national guard or the unorganized militia, and he shall designate the adjutant general or an officer of the national guard to take command of the troops mobilized and to designate the troops to be used.

D. . . . Upon mobilization into armed forces of the United States, the National guard shall pass to federal control and shall not be subject to military laws of the state until the time it reverts to control of the state."

The establishment and financing of the Arizona State Guard is provided for in A.R.S. § 26-174, which provides:

"§26-174. Arizona state guard; establishment; purpose; appropriations

A. If the national guard of Arizona or a major portion thereof is called into active federal service, or if the national guard or a major portion thereof is alerted for federal service, the governor may establish an armed force for the safety and protection of the lives and property of the citizens of the state which shall be known as the Arizona state guard.

B. The Arizona state guard shall insofar as practicable be governed by and subject to the laws of the state pertaining to the national guard. The Governor shall issue or cause to be issued rules and regulations to govern administration and organization of the state guard.

C. Appropriations made to the national guard shall be deemed appropriated to both the national guard and the Arizona state guard, if and when the latter organization is established, and any funds which are unexpended from appropriations to the national guard may be used for establishment and maintenance of the Arizona state guard."


From the foregoing, the Governor has two alternatives in the event the strength of the national guard is materially lessened by being called into active federal service.

As set forth in A.R.S. §§ 26-172 and 26-124, and when the Governor proclaims an emergency and the strength of the Arizona national guard is insufficient to cope with the emergency, or when the Governor determines that mobilization of the unorganized militia is necessary to protect the lives and property of the citizens of the State, he may mobilize the unorganized militia to augment the strength of the remaining units of the National Guard for the purposes of that specific emergency.

In the alternative when a major portion of the Arizona National Guard has been called to active federal duty or has been alerted for such a call, the Governor may establish the Arizona state guard under A.R.S. § 26-174, for the safety and protection of the lives and property of the citizens of the State over a more prolonged period. It should be noted that the formation of the Arizona State Guard is conditional upon the alerting or call of the National Guard to active federal service.

Prior to the federalization of the national guard, the Governor may, under the authority of A.R.S. § 26-174, promulgate rules and regulations to govern the administration and organization of the State guard to facilitate organization of that unit in the event such organization becomes necessary. Such rules and regulations should be promulgated with the advice and assistance of the adjutant general who, under the supervision of the Governor, has control over the military department of the State. The structure of the military department and the powers and duties of the adjutant general are set forth in A.R.S. § 26-101, et seq.

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